



Atty. Dkt. No. 084437-0158

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Shuichi FURUYA et al.

Title: NITROGEN-CONTAINING HETEROCYCLIC COMPOUNDS, THEIR PRODUCTION AND USE

Appl. No.: 10/042,229

Filing Date: 01/11/2002

Examiner: Venkataraman Balasubramanian

Art Unit: 1624

Allowed: 09/13/2004

**REQUEST FOR RECONSIDERATION OF PATENT TERM
ADJUSTMENT UNDER 37 CFR §1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants respectfully request reconsideration of the patent term adjustment included with the Notice of Allowance mailed September 13, 2004.

The above-identified application was filed on December 28, 2001. The United States Patent Office has an obligation to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), in accordance with 37 CFR § 1.702. The Patent Office failed to act in a timely fashion on the application, as a Restriction Requirement was not mailed to the Applicants until March 25, 2003. Therefore, patent term adjustment is needed for the time period beginning February 28, 2003, 14 months from application filing date, and ending March 25, 2003, the mailing date of the Restriction Requirement, a total of 25 days.

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The Patent Office mailed a non-final Office Action in the above-referenced application on May 16, 2003, which the Applicants did not respond to until August 18, 2003. This is an Applicant delay of 2 days. The Patent Office mailed a final Office Action on April 21, 2004, which the Applicants did not respond to until August 23, 2004. This is another Applicant delay of 33 days.

The "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" mailed with the Notice of Allowance on September 13, 2004, states that:

"If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 days."

It is the Applicants' understanding that this statement is incorrect, and 37 CFR 1.705 makes it clear that any request for reconsideration of such patent term adjustment that will be accrued up to the projected grant date has to be made before the issue fee is paid. After the issue fee is paid, request for reconsideration can only be filed under 37 CFR 1.705(d) if "the patent is issued on a date other than the projected date of issue and *this change* necessitates a revision of the patent term adjustment".

The applicant believes that if the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on March 22, 2005, the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of the Notice of Allowance, the Patent Term Adjustment will be 35 days.

The applicant should receive Patent Term Adjustment under 35 U.S.C. 154(b)(1)(B), which guarantees the issuance of a patent within three (3) years from the filing date of the application. The three (3) year time period will start on January 11, 2005. The projected patent grant date for this application is March 22, 2005 (28 weeks after the mailing date of the notice). If the Patent issues on the date specified in the Determination of Patent Term Adjustment, the Patent Office will have caused a delay of 70 days.

The pending application is not subject to a terminal disclaimer.

It is respectfully requested that a patent term adjustment of 35 days be issued in favor of the Applicants. The amount of 35 days is the difference of the total PTO delay of 70 days minus the total Applicant delay of 35 days.

A check for the amount of \$200 is enclosed herewith. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date Dec. 10, 2006

By 

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